IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1484 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VITHALBHAI SOMABHAI PATEL - Petitioner(s)

Versus

ROLCON ENGINEERING CO LTD - Respondent(s)

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Appearance :

MRS YOGINI V PARIKH for Petitioner(s) : 1,
NANAVATI & NANAVATI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 15/09/2005

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged the legality and validity of an Award dated 29th

September 1999 passed by the Labour Court, Anand.

2. The petitioner herein who was engaged by the respondent has challenged his termination w.e.f. 31.08.1987 by raising industrial dispute before the Labour Court, Anand. It is the case of the petitioner that he was a Workman employed by the respondent and his services were terminated illegally without following the provisions of Section 25F of the Industrial Disputes Act or without following any other legal requirement. On the other hand, the case of the employer was that the petitioner was engaged in a supervisory capacity and was drawing a salary of more than Rs. 1,600/- per month at the time of such termination. He was therefore not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. It was therefore contended that the reference was not maintainable. Additionally, it was contended that the petitioner was engaged for a fixed term of 4 years by a Contract of Employment dated 01.09.1983. This employment was for a fixed period of 4 years and upon completion of the period of contract, the petitioner was terminated. In short, it was therefore contended before the Labour Court by the employer that in view of the provisions of Section 2(oo)(bb) of Industrial Disputes Act, the

termination of the petitioner does not offend provisions of Section 25F of the Industrial Disputes Act.

3. Voluminous evidence was produced by both the sides before the Labour Court for and against the demand raised by the petitioner. The petitioner had produced documents and examined himself to establish that he was a workman and that the Contract of Employment did not envisage that his services would come to an end on completion of 4 years of period. On the other hand, the respondent employer had examined witnesses and produced documents to suggest that the petitioner was discharging duties of supervisory nature. The petitioner had placed reliance on an injury which he received while repairing a machine of the respondent employer, in which, shortly before his termination, he lost two of his fingers and third finger was badly damaged. The respondent had not disputed the accident. In fact, respondent had paid a sum of Rs. 72,001/- to the petitioner by way of compromise formula for the injuries that the petitioner received.

3.1 It was submitted before he Court that at the time of the admission of the petition, there was an attempt

made to come to a settlement. However, on account of wide variance of expectations between the parties, this settlement could not be arrived at. It was further submitted that the petitioner has reached the age of superannuation in September 2003, having crossed 58 years of age. It was therefore submitted that now there is no question of reinstatement in active service. Only question would be that of payment of compensation for the intervening period. Considering the above situation, considering the material on record, considering the number of years of service put in by the petitioner, and also considering the fact that he has crossed the age of superannuation, I find it appropriate that the present petition can be disposed of by providing that the respondent shall pay to the petitioner compensation of Rs. 1,25,000/- in lieu of all his rights against the respondent. The above amount shall be paid to the petitioner within a period of 3 months from the date of receipt of the copy of this Order.

4. With these directions, Award of the Labour Court stands modified. The petition is disposed of. Rule made absolute to the above extent.

(Akil Kureshi, J.)

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